THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.2946 of 2005

DATED: 08.06.2006

Between:

The Gram Panchayat, Boddam village,
Vepadu Mandal, Vizianagaram District,
Represented by its Sarpanch Janapareddy
Eswar Rao.

.. PETITIONER

Versus

The Government of Andhra Pradesh,
represented by its Principal Secretary to Government,
Panchayat Raj and Rural Development Department,
Secretariat Buildings, Saifabad, Hyderabad
and three others. ..
RESPONDENTS

WRIT PETITION NO.2946 of 2005

ORDER:

Heard Ms.Uma Devi representing Sri G.Rama Gopal and the learned Assistant Government Pleader for Panchayat Raj.

2. The Writ Petition is filed praying for the relief to declare the action of the respondents 1 and 2 in issuing the Memo No.109317/PTS.III/A2/2004-02, dated 21.12.2004 by the 1st respondent and the consequential orders passed by the 2nd respondent dated 3.1.2005 in letter No.4187/02/A6 as arbitrary and illegal by issuing a Writ, order or direction more particularly in the nature of Writ of Mandamus and consequently set aside the same in the interest of justice and pass such other suitable orders.

3. The petitioner is the Sarpanch of Boddam Gram Panchayat and he is challenging the Memo No.109317/PTS.III/A2/2004-02 dated 21.12.2004 issued by the 1st respondent-Government and the consequential orders passed by the 2nd respondent dated 3.1.2005 as illegal and contrary to the provisions of the A.P.

Panchayat Raj Act, 1994, hereinafter, in short, referred to as 'Act' for purpose of convenience. Several details had been narrated in the affidavit filed in support of the Writ Petition commencing from paragraphs 3 to 10.

4. It is not in serious dispute or controversy that the Government while making the impugned order, in exercise of the powers under Section 264 of the Act aforesaid, had not given any opportunity to the petitioner-Gram Panchayat to make representation. No doubt it is brought to the notice of this Court that basing on the report and also the other acceptable material, the Government made the order. Be that as it may, Section 264 of the Act dealing with power of review and revision by Government, reads as hereunder:

> "Power of Review and Revision by Government:- (1) The Government may, either suo motu or on application from any person interested, call for and examine the record of a gram Panchayat, Mandal Parishad or a Zilla Parishad or of its Standing Committees or of any authority, officer or person, in respect of any proceeding to satisfy themselves as to regularity of such proceeding or the correctness, legality or propriety of any decision or orders passed therein and, if in any case, it appears to the Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass orders

accordingly.

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending exercise of their powers under sub-section (1) in respect thereof.

(3) The Government may suo motu at any time or on an application received from any person interested within ninety days of the passing of an order under sub-section (1), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to sub-section (1) and in sub-section (2) shall apply in respect of any proceeding under this sub-section as they apply to a proceeding under sub-section (1).

(4) Every application preferred under sub-section (1) shall be accompanied by a fee of fifteen rupees".

5. The proviso to sub-Section (1) of Section 264 of the Act specifies that the Government shall not passed any order prejudicial to any party unless such party had opportunity of making a representation. In the light of the facts narrated in detail, prima facie it can be said that the petitioner-Gram Panchayat would be the affected party and inasmuch as no notice had been given to the petitioner-Gram Panchayat, the impugned order as such

referred to supra cannot be sustained. The aim of the rules of natural justice is to prevent miscarriage of justice which may occur if reasonable hearing is not given to the party before making a decision against him. Even in an administrative order involving civil consequences, the Apex Court held in STATE OF ORISSA vs. DR. BINAPANI DEI[1] that opportunity to be given and no adverse order to be passed without giving such opportunity. When the statutory provision is plain and specifically the proviso specifies affording of opportunity, making an order without giving opportunity to the affected party being in violation of the proviso to Section 264(1) of the Act aforesaid and also the principles of natural justice, the said order cannot be sustained. In ESCORTS FARMS LIMITED vs. COMMISSIONER, KUMANON DIVISION, NAINITAL AND OTHERS[2], the Apex Court held that right of hearing is a valuable right. In the light of such a position, the order made by the Government while exercising powers under Section 264 of the Act cannot be sustained and accordingly the same is hereby set aside. However, the Government is at liberty to put the writ petitioner on notice and pass appropriate orders, if it so requires.

Accordingly the Writ Petition is allowed to the extent indicated above. No costs.

08.06.2006

SSR

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[1]AIR 1967 S.C. 1269.

[2]AIR 2004 S.C. 2186.